IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

JUDGMENT
S.B. Civil Misc. Appeal No. 749/1998
S.B. Civil Misc. Stay Application No. 1792/1998
(The Oriental Insurance Co. Ltd. Versus Smt. Beena & Others)

Date of Judgment :: 18th February, 2013

HON'BLE MR. JUSTICE MAHESH CHANDRA SHARMA

Mr. Tripurari Sharma, counsel for the appellant

BY THE COURT:

This appeal has been filed against the judgment and award dated 16.5.1998 passed by MACT.

Brief facts of the case are as under:-

> "On 18.4.1995 at about 8.00 AM in the morning, Rohitash was going on his scooter from his village Basedi to Kotputli. Near Buddi hotel, a truck bearing Chesis No. RNG 2858 having been parked on road, could not be seen by him due to lightening fox of some other vehicles coming ahead towards him and his scooter dashed with the Chesis No. 2858, as a result of which he died on the spot."

After that the FIR was lodged. Claim petition was filed by the claimants. Notices were issued, reply was filed, issues were framed, evident was submitted and after hearing both the sides, an award of Rs. 2,26,000/- has been passed by the Tribunal in favour of the

claimants and against the non claimants.

Against the said judgment and award dated 16.5.1998, this appeal has been submitted by the Insurance Co. for setting aside the impugned judgment and award.

Learned counsel for the Insurance Co. has contended that learned Tribunal has erred in not considering that the deceased Scooterist Rohitash was driving the scooter negligently and at a high speed, as envisaged in Police Investigation Ex.-P/2, Ex.-P/5 and Ex.P/6. From the material on record, it had been proved that the scooterist was himself negligent in driving the scooter, as such it cannot be said that the appellant Insurance Co. is liable for compensation. While coming to the conclusion, the learned Tribunal has completely lost sight of this fact and thus, the award suffers from illegality and the same deserves to be quashed and set-aside. He has further contended that the learned Tribunal has failed to take into account the fact that the chesis No. RNG – 2858 was parked on ' kachcha' road by the side of NH No. 8 and if the deceased Rohitash had driven his scooter cautiously, there was no occasion for him to come on 'kachcha' path from the road and dashed with the chesis from back side. It

shows that he was not driving the scooter cautiously and for his fault, the appellant Insurance Co. cannot be held liable for any compensation.

I have heard learned counsel for the appellant and perused the judgment and award dated 16.5.1998 passed by the learned Tribunal. The learned Tribunal after considering the aforesaid facts and circumstances as well as the due appreciation of the evidence, and on the basis of the FIR and other documents on record, is found to have rightly passed the judgment and award dated 16.5.1998, hence I do not think it proper to interfere in the same and the appeal filed by the Insurance Co. being bereft of any merit deserves to be dismissed, which stands dismissed accordingly after confirming the judgment and award passed by the learned Tribunal.

The stay application also stands dismissed accordingly.

(MAHESH CHANDRA SHARMA),J.

DK

All corrections made in the judgment / order have been incorporated in the judgment / order being E-mailed.

Dilip Khandelwal
PA